
(2002) 03 AP CK 0108
In the Andhra Pradesh High Court
Case No : C.R.P. No. 5002 of 2001

St. Mary's Educational Society and Others	APPELLANT
Vs	
Dr. Qutubuddin Ahmed and Others	RESPONDENT

Date of Decision : 07-03-2002

Acts Referred:

Registration Act, 1908 — Section 17, 17(1), 49
Transfer of Property (Amendment) Supplementary Act, 1929 — Section 10
Transfer of Property Act, 1882 — Section 106, 107, 111, 53A

Citation : (2002) 3 ALD 363 : (2002) 4 ALT 221 : (2002) 2 APLJ 80

Hon'ble Judges : Dubagunta Subrahmanyam, J

Bench : Single Bench

Advocate : B. Nalin Kumar, for the Appellant; M. Basith Ali, for the Respondent

Final Decision : Allowed

Judgement

Dubagunta Subrahmanyam, J.—Defendants 1 to 3 in O.S.No.610 of 1997 on the file of II Senior Civil Judge, Hyderabad, filed this revision petition questioning the order dated 25th September, 2001, relating to admission of certain documents as evidence during the course of trial. The parties will be referred to as they are arrayed in the suit.

2. For better and proper appreciation of the dispute to be resolved in this revision petition, necessary facts are as follows:

Plaintiffs 1 and 2 are the owners of plaint schedule property. As per the averments in the plaint, defendants took plaint schedule property on rent from the plaintiffs as per the terms of the lease deed-cum-general agreement dated 11.8.1986 and later lease deed dated 2.10.1987 for the purpose of running a Junior College under the name and style of St. Mary's Junior College run by defendant No.1 - Society. Plaintiffs agreed to permit defendants 1 and 2 to carry out additional construction of rooms and halls at their own cost in the open space with the permission of plaintiffs in writing. Rent of Rs. 7,000=00 per month with effect from 2.10.1987 was agreed to between the parties. The period of lease

was 15 years. It was agreed that defendant No.1 shall not sublet the premises or any part thereof or take partners or carry on other business except for the aforesaid college under any circumstances. The defendant No.1 entered into a deed of extension of lease on 1.6.1992 with the plaintiffs.

The lessee had advanced to the lessor a sum of Rs. 1,00,000=00 on 7.3.1992 and later another sum of Rs. 5,00,000=00. Alleging that the defendants 1 to 3 have illegally sublet a portion of the premises and committed some other breaches of the contract, the plaintiffs filed the suit seeking the main relief, namely, delivery of vacant possession of plaint schedule property to the plaintiffs.

This Court is not concerned in this revision petition with other reliefs prayed for in the plaint and the other averments made in the plaint. This court is also not concerned now with the various pleas taken by the defendants in their written statements opposing the suit.

3. Plaintiff No.1 was examined as P.W.1 as one of the witnesses on behalf of the plaintiffs. During the course of the evidence, the defendants wanted to exhibit some documents as evidence on their behalf. The plaintiffs opposed marking of those documents. The learned Senior Civil Judge upheld the objections made by the plaintiffs and held that in view of the provisions of Section 107 of Transfer of Property Act, Sections 17 and 49 of Registration Act, the three unregistered lease deeds cannot be admitted in evidence even for collateral purpose invoking the proviso to Section 49 of the Registration Act, as terms of the lease are not for collateral purpose within its meaning. He held categorically that the unregistered lease deeds dated 11.8.1986, 2.10.1997 and 1.6.1992 cannot be admitted in evidence. Aggrieved by that order dated 25th September, 2001, this revision petition is filed.

4. Though as per the orders of the trial court three unregistered lease deeds were sought to be admitted, in the memorandum of revision petition, the order of the trial court relating to the documents dated 2.10.1987 and 1.6.1992 alone is questioned. Therefore, I proceed to consider whether those two documents dated 2.10.1987 and 1.6.1992 are admissible in evidence or not.

5. For better appreciation of the dispute involved between the parties in this revision petition, the provisions contained in Section 107 and Section 53A of Transfer of Property Act, 1882, Section 17(1)(d) and Section 49 of the Registration Act, 1908, are extracted hereunder:

SECTION 107 OF T.P.ACT:

" Lease how made: -- A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Provided that the State Government may, from time to time, by notification in the Official Gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession"

SECTION 53A OF T.P.ACT:

" part performance:-- Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty:

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof".

SECTION 17(1)(d) of Registration Act:

" 17(1): The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No.XVI of 1864, or the Indian Registration Act, 1866 (XX of 1866), or the Registration Act, 1871 (VII of 1871), or the Indian Registration Act, 1877 (III of 1877), or this Act came or comes into force, namely: --

(a) *****

(b) *****

(c) *****

(d) leases of Immovable property from year to year, or for any term exceeding

one year, or reserving a yearly rent".

Section 49 of Registration Act:

" No document required by Section 17 (or by any provision of the Transfer of Property Act, 1882 (4 of 1882) to be registered shall---

(a) affect any Immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting Immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (1 of 1877), or as evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882 (4 of 1882), or as evidence of any collateral transaction not required to be effected by registered instrument".

6. The learned counsel appearing for both the parties relied upon certain decisions on their behalf. The decisions will be considered at a later part of this order. The learned counsel for the revision petitioners strongly relied upon the proviso to Section 49 of Registration Act. It is his contention that any document required by Section 17 of the Registration Act or any provision of Transfer of Property Act though not registered can be received as evidence of a contract of specific performance, or as evidence of part performance of a contract for the purposes of Section 53A of Transfer of Property Act or as evidence of any collateral transaction not required to be effected by any registered instrument. There is no serious dispute from the plaintiffs that an unregistered document can be received in evidence for three specific purposes mentioned in proviso to Section 49.

7. It is their contention that the suit filed by them is not suit for specific performance of a contract. Therefore, the document is not admissible under the first part of the proviso. They also contend that Section 53A of the Transfer of Property Act is not applicable to the facts of the present case. Regarding the third part of the proviso, it is their contention that there is no collateral transaction to be proved in the present suit and therefore the documents are not admissible in evidence by invoking the third part of the proviso.

8. The main contention is that as the documents are lease deeds, they require registration as provided u/s 17(d) of Registration Act. They strongly contend that as per Section 107 of Transfer of Property Act, a lease of Immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. It is their contention that as the period of lease under each document exceeds one year, the lease can be

evidenced only by a registered instrument. They contend that the lease deeds are not covered by proviso to Section 49 of Registration Act. In the impugned order, the learned Senior Civil Judge accepted that contention and observed that Section 107 of Transfer of Property Act indicates the mode in which leases may be made and a lease of Immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. He observed further that in view of the provision in Section 107 of Transfer of Property Act, Sections 17 and 49 of the Registration Act are not applicable. I am unable to accept that contention. Proviso to Section 49 of Registration Act makes it perfectly clear that an unregistered document affecting Immovable property and required by that Act or the Transfer of Property Act to be registered may be received as evidence for any of the three purposes mentioned in that proviso. The said proviso did not exclude impliedly or explicitly a lease deed which is compulsorily registerable as per the provision in Section 107 of Transfer of Property Act from its purview or operation. The said proviso covers not only Section 107 of Transfer of Property Act, but also the other provisions of Transfer of Property Act under which a transaction affecting Immovable property can be made only by a registered document.

9. It is the contention of the learned counsel for the revision petitioners that they are invoking second part of the proviso to Section 49 of the Registration Act for getting the lease deeds admitted in evidence.

10. Section 53A of Transfer of Property Act enables the affected person to invoke the said provision to protect his possession if his possession is threatened by any person. The present suit is filed to evict the defendants 1 to 3 from the possession of the suit property. There is no dispute that the lease deed is supported by consideration. The necessary terms of the lease can be with reasonable certainty ascertained from the two lease deeds concerned. The defendants 1 and 2 as per recitals in the documents had taken possession of the suit property in part performance of the terms of the lease deeds in their favour. As per plaint averments, after taking possession of the suit property, defendants had made constructions in the suit property. By the date of the suit, they are continuing in possession of the suit property in view of the terms of the lease deeds in their favour. Therefore, they are entitled to use the lease deeds concerned as a shield to protect their possession when the plaintiffs are seeking to dispossess and evict them from the suit property. Defendants can invoke the theory of part performance of a contract embodied in Section 53A of Transfer of Property Act.

11. I would now consider the various decisions relied upon by both the counsel. At the first instance I would consider the decisions relied upon by the learned counsel for the revision petitioners. The first decision is a Full Bench decision of the Madras High Court in SUBRAMANIAN CHETTIAR Vs. ARUNACHALAM (1). As per the facts of this case, the plaintiff relinquished his interest in movable and Immovable property of a partnership firm and he has to receive a particular sum

from the other partners. He filed the suit to recover the amount payable under the document dated 15.8.1937. The trial court held that the said suit is not a specific performance suit and as the document is unregistered document relinquishing the rights in Immovable property, the document is not admissible in evidence. The Madras High Court held that the said suit is a specific performance suit. Regarding the proviso to Section 49 of Registration Act, the Madras High Court held as follows:

" The proviso makes it perfectly clear that an unregistered document affecting immovable property may be put in evidence in a suit for specific performance. If the document is put in evidence and embodies the contract between the parties, it is sufficient to support the claim".

12. The second decision relied upon by him is a judgment of A.P. High Court in VEERAPA NAIDU Vs. VENKAIAH (2).The High Court held as follows:

" On the language of the proviso to Section 49 an unregistered document affecting immovable property, in spite of want of registration, can be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act".

13. The third decision relied upon is a judgment of the Supreme Court in HAMDA AMMAL Vs. AVADIAPPA PATHAR (3).As per the facts of that decision, a sale deed was executed on 9th September, 1970 and it was registered on 26th October, 1970. After execution of and before the registration of the document, there was an attachment of the said property before judgment. The Supreme Court held that the contention that till registration the execution of the sale deed does not confer any rights whatsoever on the vendee cannot be accepted. The Supreme Court considered the effect of proviso to Section 49 of Registration

" We cannot accept the contention of learned counsel for the respondent that till registration, the execution of the sale deed does not confer any rights whatsoever on the vendee. Even Section 49 of the Registration Act in its proviso inserted by Section 10 of the Transfer of Property (Amendment) Supplementary Act, 1929, negatives the above contention of the learned counsel. The above provision lays down that an unregistered document affecting immovable property and required by this Act or by the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as an evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument. Thus even an unregistered document can be received as evidence for purposes mentioned in the proviso to Section 49 of the Registration Act".

14. The fourth decision relied upon is another judgment of the Supreme Court in MANEKLALVs. H.J. GINWALLA & SONS (4) wherein it was observed as follows:

" An agreement of lease creating a present demise but not registered is admissible u/s 49, Registration Act as evidence of part performance".

15. The last decision relied upon is a judgment of Hyderabad High Court in MOHD. SADRUDDIN Vs. GULAM MOHIUDDIN (5). This decision deals with the theory of part performances embodied in Section 53A of Transfer of Property Act. Relying upon the decision of the Supreme Court in Maneklal's case (4 supra), the High Court held that provisions of Section 53A would apply to a lease also. The relevant passage reads as follows:

" That section enables the lessee who has been put in possession of a property in pursuance of an agreement to use the possession as a defence in any suit that might be brought to eject him or disturb his possession and therefore the court should allow evidence to be given of the agreement even though the document containing the agreement itself is not receivable in evidence being unregistered"

16. Against those decisions, the learned counsel for the respondents relied upon eight decisions. The first decision is in J.R. AGARWAL Vs. THE 6th ADDITIONAL DISTRICT JUDGE (6). It was held in this decision that an unregistered lease deed cannot be admitted for proving either the duration of the lease or the rate of interest or for establishing the relationship of landlord and tenant as they constitute the terms of the contract and the terms of a lease are not a collateral purpose within the meaning of the proviso to Section 49 of the Registration Act. This decision is not applicable to the facts of the present case. The present lease deeds are sought to be put in as evidence of a part performance of a contract for the purpose of Section 53A of Transfer of Property Act and not as evidence of any collateral transaction.

17. The second decision relied upon is a judgment of the Supreme Court in SAMIR MUKHERJEE Vs. DAVINDER K. BAJAJ (7). It was held by the Supreme Court that in the absence of a registered instrument, no valid lease from year to year, etc., can be created and non-existence of a registered instrument to create such a lease will exclude the operation of Section 106 of Transfer of Property Act. The question of admissibility of such a document did not fall for consideration in the above decision.

18. The third decision relied upon is a judgment of A.P. High Court in S. VEERA REDDY vs. Ch. CHANDRAIAH (8). In that suit an unregistered lease deed was sought to be admitted in evidence and it was not admitted as it was not a registered lease deed. This decision is not applicable to the facts of the present case as the proviso to Section 49 of the Registration Act was not invoked and it was not sought to be admitted for any of the three purposes covered by the said proviso to Section 49 of Registration Act.

19. The fourth decision relied upon is Madhra Pradesh High Court judgment in S. AMAR SINGH Vs. SURINDER KAUR (9). It was held that an unregistered lease deed cannot be used to show the period of lease and the rent. The above purposes are not collateral purposes. Further the principle of law laid down in the

above decision is in favour of the revision petitioners. The relevant passage reads as follows:

" Section 49 of Registration Act does not say that an unregistered document which requires to be registered, shall not be received in evidence. The only bar is that such a document cannot be received as evidence of any transaction affecting the property. As a matter of fact, the proviso to Section 49 clearly empowers the courts to admit any unregistered document as evidence of collateral transaction not required to be registered. An unregistered lease deed is admissible to prove the nature and character of possession of the defendant and that Section 49 does not come in the way".

20. The fifth decision relied upon is a judgment of A.P. High Court in V. JAGANNATHA RAO Vs. NARANNAIDU(10).A reading of paras 23 and 24 of the said judgment makes it clear that the lease document Ex.A.122 was sought to be relied upon to get the relief prayed for in the plaint and therefore it is held that the said document is inadmissible in evidence.

21. The sixth decision relied upon is a decision of the Supreme Court in BUDH RAM Vs. RALLA RAM (11). I have read the entire judgment. The facts or the principles of law laid down in the above decision have no application whatsoever to the facts of the present case.

22. The seventh decision relied upon is a decision of the Supreme Court in SATISH CHAND Vs. GOVARDHAN DAS (12). This decision is also not applicable to the facts of the present case. In this case after expiry of the lease period, the tenant continued in possession of the property. It was held that he is a tenant holding over and a quit notice u/s 107 of Transfer of Property Act is necessary.

22. The last decision relied upon is a judgment of Patna High Court in ABDUL SATTAR Vs. KAILASH PRASAD (13). In this decision the crucial document is unregistered lease agreement. It was held that the said document is invalid and therefore the duration of the lease can be implied in accordance with Section 106 of T.P. Act and the lease cannot be said to have been terminated by efflux of time. It was also held that lease was not terminated u/s 111(g) of T.P. Act and when the lease is not legally determined at all, the suit for eviction would be premature. This decision has no application to the facts on hand. In this decision the admissibility of the lease agreement for any purpose covered by proviso to Section 49 of Registration Act did not at all fall for consideration of Patna High Court.

23. The main thrust of the plaintiffs is that as per Section 107 of Transfer of Property Act, the lease deed is compulsorily registerable and such a document is not covered by Section 49 of Registration Act. The said contention became untenable in view of the decision of the Supreme Court in Maneklal's case (4 supra). In that decision the Supreme Court held that an agreement of lease creating a present demise but not registered is admissible u/s 49, Registration Act, as evidence of part performance.

24. The foregoing discussion clearly shows that the two documents dated 2.10.1987 and 1.6.1992, in spite of the fact of non-registration of those documents, are admissible in evidence as per the proviso to Section 49 of the Registration Act as a shield to protect the possession of the defendants 1 to 3 in the suit filed against them seeking their eviction from the suit property and delivery of vacant possession of the suit property to the plaintiffs as per the theory of part performance of the contract embodied in Section 53A of Transfer of Property Act, 1882. I, therefore, hold that those two documents are admissible in evidence.

25. In the result, the revision petition is allowed. The impugned order dated 25th September, 2001, relating to the admission in evidence of those two documents is set aside. The trial court is directed to receive them as evidence on behalf of the defendants for the purposes mentioned in proviso to Section 49 of the Registration Act.